

# HOUSE BILL REPORT

## E3SHB 1001

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### As Passed House:

March 13, 2007

**Title:** An act relating to auto theft.

**Brief Description:** Combating auto theft.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Lovick, Priest, McCoy, Pearson, Kirby, Ross, Hunt, Skinner, Simpson, Newhouse, O'Brien, Armstrong, Ericks, Moeller, Miloscia, Grant, Sells, Green, Eickmeyer, Takko, Kelley, B. Sullivan, Hudgins, Cody, Haigh, Morrell, Chase, Ormsby, Kessler, Blake, Conway, Chandler, P. Sullivan, McDonald, Rodne, Haler, Jarrett, Roach, Walsh, Kristiansen, Wallace, McDermott, Condotta, VanDeWege, Dunshee, McCune, Kenney, Schual-Berke, Hinkle, Bailey, Lantz, Warnick, Upthegrove, Alexander, Campbell and Rolfes).

### Brief History:

#### Committee Activity:

Public Safety & Emergency Preparedness: 1/10/07, 2/1/07 [DPS];

Human Services: 2/15/07, 2/22/07 [DP2S(w/o sub PSEP)].

Appropriations: 3/3/07 [DP3S].

#### Floor Activity:

Passed House: 3/13/07, 80-16.

### Brief Summary of Engrossed Third Substitute Bill

- Increases auto theft-related penalties and triple scores prior offenses for adult offenders.
- Counts prior vehicle prowling offenses as prior convictions when calculating an offender's sentence.
- Requires mandatory minimum penalties for juvenile adjudicated of an auto theft-related offense and requires an evaluation and treatment at sentencing.
- Creates new crimes to cover the making and possessing of motor vehicle theft tools.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Establishes the Washington Auto Theft Prevention Authority (WATPA), under the umbrella of the Washington Association of Sheriffs and Police Chiefs, to review motor vehicle crimes in Washington and analyze methods for combating the problem.

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## HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Lovick.

**Staff:** Yvonne Walker (786-7841).

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## HOUSE COMMITTEE ON HUMAN SERVICES

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety & Emergency Preparedness. Signed by 6 members: Representatives Dickerson, Chair; Roberts, Vice Chair; Ahern, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; McCoy and O'Brien.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Bailey and Darneille.

**Staff:** Sonja Hallum (786-7092).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The third substitute bill be substituted therefor and the third substitute bill do pass. Signed by 32 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Buri, Chandler, Cody, Conway, Dunn, Ericks, Fromhold, Grant, Haigh, Hinkle, Hunt, Hunter, Kenney, Kessler, Kretz, Linville, McDermott, McDonald, McIntire, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist, P. Sullivan and Walsh.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Darneille and Kagi.

**Staff:** Elisabeth Donner (786-7137).

**Background:**

***Sentencing Reform Act & Scoring***

Under the Sentencing Reform Act (SRA), an offender convicted of a felony has a standard sentence range that is based on the seriousness of the offense and the offender's felony

convictions. The number of points an offender receives for current and prior felonies varies according to certain rules.

### ***Motor Vehicle Theft***

***Theft 1:*** A person is guilty of theft (of a motor vehicle) in the first degree, if such person commits theft of property or services that exceed \$1,500 in value other than a firearm. Theft in the first degree is ranked as a seriousness level II, class B felony offense under the SRA which, for a first-time adult offender has a standard sentence range of zero to 90 days in jail. Under the Juvenile Justice Act (JJA), the offense is a category B offense and a first-time juvenile offender would receive a local sanction. Local sanctions consists of a maximum of 30 days in detention, 12 months of community supervision, 150 hours of community restitution, and a \$500 fine.

***Theft 2:*** A person is guilty of theft (of a motor vehicle) in the second degree, if such person commits theft of a motor vehicle valued at \$1,500 or less. Theft in the second degree is ranked as a seriousness level I, class C felony offense under the SRA which, for a first-time adult offender has a standard sentence range of zero to 60 days in jail. Under the JJA, the offense is a category C offense and a first-time juvenile offender would receive a local sanction.

### ***Possession of a Stolen Vehicle***

***Possession of Stolen Property 1:*** A person is guilty of possession of stolen property in the first degree if he or she possesses stolen property (or a vehicle) which exceeds \$1,500 in value. Possession of stolen property in the first degree is ranked as a seriousness level II, class B felony offense under the SRA which, for a first-time adult offender has a standard sentence range of zero to 90 days in jail. Under the JJA, the offense is a category B offense and a first-time juvenile offender would receive a local sanction.

***Possession of Stolen Property 2:*** A person is guilty of possession of stolen property in the second degree if he or she possesses stolen property (or a vehicle) valued at \$1,500 or less. Possession of stolen property in the second degree is ranked as a seriousness level I, class C felony offense under the SRA which, for a first-time adult offender has a standard sentence range of zero to 60 days in jail. Under the JJA, the offense is a category C offense and a first-time juvenile offender would receive a local sanction.

### ***Taking A Motor Vehicle Without Permission***

***Taking A Motor Vehicle Without Permission 1:*** A person is guilty of taking a motor vehicle without permission in the first degree, if such person intentionally takes a motor vehicle without permission and he or she:

- alters the vehicle to change its appearance or identification numbers;
- removes parts from the vehicle with the intent to sell the parts;
- exports or attempts to export the vehicle out-of-state or out of the country for profit; intends to sell the vehicle; or
- is engaged in a conspiracy, the object of which is the theft of motor vehicles for sale to others for profit.

Taking a motor vehicle without permission in the first degree is ranked as a seriousness level V, class B felony offense under the SRA which, for a first-time adult offender has a standard sentence range of six to 12 months in jail. Under the JJA, the offense is a category C offense and a first-time juvenile offender would receive a local sanction.

Taking A Motor Vehicle Without Permission 2: A person who intentionally takes a motor vehicle without permission or voluntarily rides in a vehicle knowing it was taken without permission, is guilty of a second degree taking a motor vehicle without permission offense. Taking a motor vehicle without permission in the second degree is ranked as a seriousness level I, class C felony offense under the SRA which, for a first-time adult offender has a standard sentence range of zero to 60 days in jail. Under the JJA, the offense is a category C offense and a first-time juvenile offender would receive a local sanction.

### ***Vehicle Prowling***

Vehicle Prowling 2: A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property, he or she enters or remains unlawfully in a vehicle, other than a motor home, or a vessel. Vehicle prowling in the second degree is a gross misdemeanor offense. A gross misdemeanor offense is punishable by imprisonment of not more than one year in jail, or by a fine of not more than \$5,000, or both. Generally, gross misdemeanor offenses do not count as part of an offender's score when calculating his or her standard sentence range.

### ***Home Detention***

Home detention is a program of partial confinement available to offenders whereby the offender is confined in a private residence subject to electronic surveillance. Generally it may not be imposed for offenders convicted of such offenses as a violent offense, drug offense, sex offense, or certain assault offenses.

### ***Theft of Rental, Leased, or Loaned Property***

Under the theft and robbery statute, a person who, with intent to deprive the owner, wrongfully obtains, exerts or gains unauthorized control over personal property that is rented or leased to the person, is guilty of theft of rental, leased, or lease-purchased property. It is a seriousness level II, class B felony offense if the property is valued at \$1,500 or more. It is a seriousness level I, class C felony offense if the property is valued between \$250 and \$1,500. It is a gross misdemeanor offense if the property is valued at less than \$250.

The statute does not expressly include loaned property.

### ***Traffic Infractions***

Generally a traffic infraction is a non-criminal offense. The penalty for a traffic infraction may include a financial penalty or sanctions against the person's driver's license including suspension, revocation, or denial. The base penalty for a traffic infraction, ranging from \$37 to \$500, is established by court rule. In addition, other statutory penalties and fees can apply.

### **Summary of Engrossed Third Substitute Bill:**

The act known as the Elizabeth Nowak-Washington Auto Theft Prevention Act provides for increased penalties and triple scoring of prior motor vehicle-related offenses (theft, possession of a stolen vehicle, and taking a vehicle without permission). Home detention is established as an option for first-time adult offenders. Juvenile offenders are subject to risk assessments, home detention, and increased penalties for the same offenses. New crimes are created to cover the making and possession of motor vehicle theft tools. A Statewide Auto Theft Prevention Authority is created to study motor vehicle theft in Washington.

### ***Sentencing Reform Act & Scoring***

In the case of multiple prior convictions for the purpose of computing an offender's score, if the present conviction is for an offense involving motor vehicle theft, possession of a stolen vehicle, or taking a motor vehicle without permission in the first or second degree, an offender receives:

- one point for each prior conviction involving vehicle prowling; and
- three points for each prior adult and juvenile conviction involving theft of a motor vehicle, possession of a stolen vehicle, or taking a motor vehicle without permission in the first or second degree.

### ***Motor Vehicle Theft***

Separate statutory provisions are created to specifically cover the crimes of theft or possession of a stolen "motor vehicle." As a result, the crimes of theft of a motor vehicle and possession of a stolen motor vehicle are removed from the general statutory provisions relating to theft or possession of stolen "property and services."

Motor Vehicle Theft: A person is guilty of motor vehicle theft offense if such person commits theft of any motor vehicle despite the value amount of the vehicle. Theft of a motor vehicle is punishable as a seriousness level II, class B felony offense for adult offenders and a category B offense for juvenile offenders.

### ***Possession of a Stolen Vehicle***

Possession of a Stolen Vehicle: A person is guilty of possession of a stolen motor vehicle offense if he or she possesses a stolen vehicle despite the value amount of the vehicle. Possession of a stolen motor vehicle is punishable as a seriousness level II, class B felony offense for adult offenders and a category B offense for juvenile offenders.

### ***Taking a Motor Vehicle***

Taking a Motor Vehicle without Permission 1 and 2: Under the JJA, the offense of taking a motor vehicle without permission in the first and second degree is a category B offense.

### ***Home Detention***

The eligibility for home detention is expanded to include adult offenders convicted of taking a motor vehicle without permission in the second degree, theft of a motor vehicle, or possession of a stolen motor vehicle in the first degree, provided the offender has:

- no convictions for taking a motor vehicle without permission, theft of a motor vehicle, or possession of a stolen motor vehicle during the preceding five years;

- no more than two prior motor vehicle-related (theft, possession, or taking without permission) convictions;
- no violent convictions in the preceding two years;
- no more than two prior convictions for a violent offense in total;
- no prior escape charges; and
- fulfilled any other conditions of the home detention program.

### ***Juvenile Offenders***

In any case where a juvenile has been adjudicated for a motor vehicle theft-related offense, the juvenile's disposition must include an evaluation to determine whether the juvenile is in need of treatment.

A juvenile offender adjudicated of an offense involving theft of a motor vehicle, possession of a stolen motor vehicle, or taking a motor vehicle without permission in the first degree, is subject to the following mandatory minimum sentencing terms:

- juveniles with no prior adjudications must be sentenced to a minimum of five days home detention, 45 hours of community service, and a \$200 fine;
- juveniles with one prior adjudication shall be sentenced to a minimum of 10 days detention, 90 hours of community service, and a \$400 fine; and
- juveniles with two or more prior adjudications shall be sentenced to no less than 15-36 weeks confinement, seven days home detention, four months supervision, 90 hours of community service, and a \$400 fine.

A juvenile offender adjudicated of an offense that involved taking a motor vehicle without permission in the second degree is subject to the following mandatory minimum sentencing terms:

- juveniles with no prior adjudications shall be sentenced to no less than one day home detention, one month supervision, 15 hours of community service, and a \$50 fine;
- juveniles with one prior adjudication shall be sentenced to no less than one day detention, two days home detention, two months supervision, 30 hours of community service, and a \$150 fine; and
- juveniles with two or more prior adjudications shall be sentenced to no less than three days detention, seven days home detention, three months supervision, 45 hours of community service, and a \$150 fine.

### ***Theft of Rental, Leased, or Loaned Property***

The statute relating to rental, leased, or lease-purchased property is expanded to include loaned property. A person who, with intent to deprive the owner, wrongfully obtains, exerts or gains unauthorized control over personal property that is loaned to the person, is guilty of theft of rental, leased, or lease-purchased, or loaned property. The same penalties as current statute still apply.

### ***Making or Possession of Auto Theft Tools***

A person who makes, mends, uses, or possesses tools commonly used for the commission of vehicle theft is guilty of making or having vehicle theft tools, a gross misdemeanor offense. A motor vehicle theft tool includes, but is not limited to, the following: slim jim, false master

key, master purpose key, altered or shaved key, trial or jiggle keys, slide hammer, lock puller, picklock, bit, nippers, and any other implement shown by facts and circumstances that is intended to be used in the commission of a motor vehicle theft.

***Washington Auto Theft Prevention Authority***

The Washington Auto Theft Prevention Authority (WATPA) is established, within the Washington Association of Sheriffs and Police Chiefs, to review and make recommendations to the Legislature and the Governor regarding motor vehicle theft in Washington. The WATPA consists of the following members, appointed by the Governor, and each serving staggered four-year terms:

- the Executive Director of the Washington Association of Sheriffs and Police Chiefs, or the executive director's designee;
- the Chief of the Washington State Patrol, or the chief's designee;
- two police chiefs;
- two sheriffs;
- one prosecuting attorney;
- a representative from the insurance industry who is responsible for writing property and casualty liability insurance in Washington;
- a representative from the automobile industry; and
- one member of the general public.

The WATPA must annually elect a chairperson and other such officers as it deems appropriate from its membership and it may obtain or contract for staff services, including an executive director, and any facilities and equipment as the authority requires to carry out its duties. The WATPA may also solicit and accept gifts, grants, bequests, devises, or other funds from public and private sources to support its activities.

In preparing its recommendations, the WATPA must, at a minimum, review the following issues:

- determine the scope of the problem of motor vehicle theft, including particular areas of the state where the problem is the greatest;
- analyze the various methods of combating the problem of motor vehicle theft;
- develop and implement a plan of operation; and
- develop and implement a financial plan.

The WATPA must annually report its activities, findings, and recommendations during the preceding year to the Legislature by December 31.

The WATPA is not a law enforcement agency and may not gather, collect, or disseminate intelligence information for the purpose of investigating specific crimes or pursuing or capturing specific perpetrators. Members of the authority may not exercise general authority peace officer powers while acting in their capacity as members of the WATPA, unless the exercise of peace officer powers is necessary to prevent an imminent threat to persons or property.

The Governor may remove any member of the WATPA for cause including but not limited to: neglect of duty, misconduct, malfeasance or misfeasance in office, or upon written request of two-thirds of the members of the WATPA. Upon the death, resignation, or removal of a member, the Governor shall appoint a replacement to fill the remainder of the unexpired term.

Members of the WATPA who are not public employees must be compensated in accordance with the salaries and expense statute and must be reimbursed for travel expenses incurred in carrying out the duties of the WATPA.

Any member serving in their official capacity on the WATPA, their employer, or any other entity that selected members to serve, are immune from a civil action based upon an act performed in good faith.

#### ***Washington Auto Theft Prevention Authority Account***

The WATPA Account (Account) is created in the custody of the State Treasurer. All receipts from gifts, grants, bequests, devises, specific traffic infraction surcharges, or other funds from public and private sources to support its activities must be deposited into the Account. Expenditures from the Account may be used only for purposes of the WATPA and implementing this auto theft act under statute.

The Account is subject to allotment procedures under the state budgeting, accounting, and reporting system statute but an appropriation is not required for expenditures. The WATPA must allocate moneys in the Account to public agencies for the purpose of establishing, maintaining, and supporting programs that are designed to prevent motor vehicle theft, including providing financial support:

- to prosecution agencies to increase the effectiveness of motor vehicle theft prosecution;
- to a unit of local government or a team consisting of units of local governments to increase the effectiveness of motor vehicle theft enforcement;
- for the procurement of equipment and technologies for use by law enforcement agencies for the purpose of enforcing motor vehicle theft laws; and
- for programs that are designed to educate and assist the public in the prevention of motor vehicle theft.

The costs of administration shall not exceed 10 percent of the moneys in the Account in any one year so that the greatest possible portion of the moneys available to the authority is expended on combating motor vehicle theft.

Prior to awarding any moneys from the WATPA Account for motor vehicle theft enforcement or prosecution efforts, the WATPA must verify that the financial award includes sufficient funding to cover proposed activities, which include, but are not limited to administration, law enforcement, prosecutor, court, and county offender confinement costs. Moneys expended from the WATPA Account shall be used to supplement, not supplant, other moneys that are available for motor vehicle theft prevention.

#### ***Traffic Infractions***

In addition to any other penalties imposed by law, a person found to have committed a traffic infraction must be assessed a \$10 surcharge per infraction. Revenue from this fee must be deposited to the State Treasurer for deposit in the WATPA Account.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed, except section 25, relating to an automobile surcharge, which contains an emergency clause and takes effect on July 1, 2007.

**Staff Summary of Public Testimony:** (Public Safety & Emergency Preparedness)

(In support of PSEP substitute bill) Law enforcement and prosecutors are very frustrated with the increasing problem of auto theft. There must be a combination of intervention and punishment. This bill graduates punishment based on the offender's prior offenses. The strength of this bill is that it focuses on repeat offenders. If your car is stolen, you don't care if it was stolen by an adult or a juvenile. There must be stiffer sentences for vehicle offenses for adults and juveniles. Car thefts have been increasing. Hard time is not given out until after the seventh time for adults. Gangs use auto thefts as a way to initiate juveniles into the gang. Youth are being recruited by organized crime. Juveniles need determinate and sure sanctions. We are seeing this offense increase because there are no consequences. We have been trying since 1992 to get more sure sanctions for youth. The prosecutors are not sure the fines are necessary and we need to reduce the Taking a Motor Vehicle in the Second Degree offense from a class B to a class C offense. Auto theft results in a significant financial loss and higher insurance rates.

(Neutral) Thirty percent of auto thefts in 2005 were committed by juveniles. Between 2000 and 2005, the number of juvenile auto theft arrests decreased by 43.6 percent.

(With concerns) We often see taking motor vehicle cases in which a juvenile is usually allowed to drive the family car and then takes it one day without permission. This law doesn't make as much sense in these types of cases. The courts are concerned about the traffic surcharges and traffic infraction penalties.

(Opposed) Mandatory minimums for local sanctions can raise problems due to the potential for disparate treatment for offenses. The increase in severity for theft of a vehicle does not make sense. The offender could get more of a sentence for taking the car than if he set it on fire and burned it. We need to compare the seriousness of this offense to other Class B offenses to look at whether this makes sense. This legislation is complicated and deals with adults and juveniles in the same way. However, juveniles are different than adults. There is no evidence this works. There is evidence that juvenile crime is down, so maybe we should be focusing on adults. This increases the time before the offense can be taken off a youth's record. The fiscal impact of this bill is huge.

**Persons Testifying:** (In support PSEP substitute bill) Representative Lovick, prime sponsor; Dave Edler, Mayor of Yakima; Ruby Aguilar; Juan Mendoza; Sam Granato, Yakima Police

Department; Chief Fred B. Walser, Sultan Police Department and Washington Association of Sheriffs and Police Chiefs; Joe Marine, Mayor of Mukilteo; Tom McBride, Washington Association of Prosecuting Attorneys; Mel Sorensen, Property Casualty Insurance Association, Allstate Insurance, and American Family Insurance; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Neutral) Mary Williams, Governor's Juvenile Justice Advisory Committee.

(With concerns) Phil Jans, Washington Association of Juvenile Court Administrators; Jill Johanson, Superior Court Judges Association; Jeff Hall, Board for Judicial Administration; and Sam Merrill, Friends Committee on Washington Public Policy.

(Opposed) Ronald Kessler, King County Superior Court; John Sinclair, Washington Association of Criminal Defense Lawyers and Washington Defenders Association; and Yoshe Revelle.

**Persons Signed In To Testify But Not Testifying:** None.